

meet this 15-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the administrative law judge, either through intervention as a party pursuant to 29 CFR 18.10 (b) through (d) or through participation as an amicus curiae pursuant to 18 CFR 18.12.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is filed by mail, it should be by certified mail. If the request is filed by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within ten days.

(f) Copies of the request for a hearing shall be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

§ 655.635 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ 655.640 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address or, in the case of the attesting employer, to the employer's designated representative in the U.S. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ 655.645 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 655.630 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within seven calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days' notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons. Even if such reasons are shown, no extension of the hearing date beyond 60 days

from the date of the Administrator's determination shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § 655.640 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § 655.640 of this part.

(e) In reaching a decision, the administrative law judge shall, in accordance with the Act, impose the following burden of proof—

(1) The attesting employer shall have the burden of producing facts and evidence to establish the matters required by the attestation at issue;

(2) The burden of proof as to the applicability of the automated vessel exception shall be on the party to the hearing who is asserting that the employer is not eligible for the exception.

(f) The administrative law judge proceeding shall not be an appeal or review of the Administrator's ruling on a request for a cease and desist order pursuant to § 655.615.

§ 655.650 Decision and order of administrative law judge.

(a) Within 90 calendar days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision. If any party desires review of the decision, including judicial review, a petition for Secretary's review thereof shall be filed as provided in § 655.655 of this subpart. If a petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Secretary issues an order affirming the decision, or, unless and until 30 calendar days have passed after the Secretary's receipt of the petition for review and the Secretary has not issued notice to the parties that the Secretary will review

the administrative law judge's decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

§ 655.655 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which